

**LEGISLATIVE SERVICES AGENCY
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FISCAL IMPACT STATEMENT

LS 6747

BILL NUMBER: SB 294

NOTE PREPARED: Jan 1, 2009

BILL AMENDED:

SUBJECT: Identity Deception.

FIRST AUTHOR: Sen. Steele

FIRST SPONSOR:

BILL STATUS: As Introduced

FUNDS AFFECTED: X GENERAL
DEDICATED
FEDERAL

IMPACT: State & Local

Summary of Legislation: This bill creates the identity theft unit (unit) in the office of the Attorney General, and specifies that the unit shall: (1) investigate consumer complaints related to identity theft; (2) assist victims of identity theft; (3) cooperate with law enforcement investigations related to identity theft; and (4) assist state and federal prosecuting attorneys in the investigation and prosecution of identity theft. It authorizes certain agencies and persons to cooperate with the unit in investigating identity theft, and authorizes a prosecuting attorney to deputize the Attorney General or a Deputy Attorney General to assist in the prosecution of an identity theft case. It provides that the unit may establish an educational program to inform consumers concerning identity theft.

The bill requires the owner of a data base to notify the Attorney General and the owner's regulator, if applicable, of a breach of the security of data. It specifies certain information that a data base owner must disclose if there is a breach of the security of data, establishes a rebuttable presumption that failing to notify affected persons within 30 days after discovering a breach constitutes unreasonable delay, and requires a data base owner to take certain steps to safeguard data.

The bill provides certain rights to the victims of identity theft. It increases the penalty for identity deception committed against the person's child to a Class C felony. It provides that unlawfully using identifying information that identifies a person other than the person who is using the information but that does not belong in its entirety to any live or deceased person constitutes synthetic identity deception. The bill also makes other changes and conforming amendments.

Effective Date: July 1, 2009.

Explanation of State Expenditures: *Attorney General (AG):* This bill requires the AG to establish an identity theft unit to assist prosecuting attorneys in enforcing identity deception. It is estimated that this provision can be implemented through existing resources within the Consumer Protection Division of the AG's office. The bill allows the AG to bring a civil penalty of not more than \$5,000 per deceptive act by data base owners and to recover the costs of investigation and maintaining the action.

Penalty Provisions: This bill provides that a person commits a Class C felony if they obtain, possess, transfer, or use the identifying information of a person's child; obtain, possess, transfer, or use the synthetic identifying information of more than 100 people; or the fair market value of the fraud or harm caused by the offense is at least \$50,000. This bill provides that a person commits a Class D felony if they commit synthetic identity deception.

A Class C felony is punishable by a prison term ranging from two to eight years depending upon mitigating and aggravating circumstances. A Class D felony is punishable by a prison term ranging from six months to three years or reduction to Class A misdemeanor depending upon mitigating and aggravating circumstances.

The average length of stay in Department of Correction (DOC) facilities for all Class C felony offenders is approximately two years, and for all Class D felony offenders is approximately ten months. Assuming offenders can be housed in existing facilities with no additional staff, the marginal cost for medical care, food, and clothing is approximately \$1,825 annually, or \$5 daily, per prisoner. However, any additional expenditures are likely to be small.

Explanation of State Revenues: *Penalty Provisions:* If additional court cases occur and fines are collected, revenue to both the Common School Fund (from criminal fines) and the state General Fund (from court fees) would increase. The maximum fines for Class C and Class D felonies is \$10,000. However, any additional revenues would likely be small.

Explanation of Local Expenditures: *Penalty Provisions:* If more defendants are detained in county jails prior to their court hearings, local expenditures for jail operations may increase. However, any additional expenditures would likely be small.

Explanation of Local Revenues: *Penalty Provisions:* If additional court actions occur and a guilty verdict is entered, local governments would receive revenue from court fees. However, the amounts would likely be small.

State Agencies Affected: AG; DOC.

Local Agencies Affected: Trial courts, local law enforcement agencies.

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